

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2009 JUL 31 P 1:56

DANIEL CANO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

Civil Case No. 2:09-CV-658 TC

Criminal Case No. 2:00-CR-326 TC

Mr. Daniel Cano has filed a petition under 28 U.S.C. § 2255.¹ On November 1, 2001, Mr. Cano plead guilty to the following counts of a felony information: threatening to murder a federal law enforcement officer (count 2); mailing threatening communication, aiding and abetting (count 6); and mailing threatening communication (count 10s). On August 14, 2002, the court sentenced Mr. Cano to 115 months to run consecutive with all sentences imposed in state or federal court and 36 months supervised release. The Judgment was entered on August 27, 2002. Mr. Cano did not file an appeal. On July 28, 2009, Mr. Cano filed his petition².

Mr. Cano's § 2255 petition must be denied because it is time-barred. Under 28 U.S.C. § 2255(1), Mr. Cano had one year from "the date on which the judgment of conviction bec[ame]

¹Because the record in this case conclusively shows that Ms. Cano is not entitled to relief, the court has decided the matter without a hearing.

²Mr. Cano signed his petition on July 19, 2009. It was received and docketed by the clerk of the court on July 28, 2009.

final” to file his petition. Here, Mr. Cano’s judgment and conviction was entered on August 27, 2002. Under Federal Rule of Appellate Procedure 4(b), Mr. Cano had ten days from August 27, 2002 (excluding weekends and holidays), or until September 11, 2002, to appeal his conviction. He did not appeal. Accordingly, his Judgment of Conviction became final on September 11, 2002, when his time for filing a notice of appeal expired. As a result, the one-year time period for Mr. Cano’s § 2255 petition began to run on September 11, 2002, and expired on September 11, 2003.

Mr. Cano did not file the current petition until July 28, 2009, nearly six years after the expiration of the one-year time period. Accordingly, because Mr. Cano did not file his petition within one year of the date his judgment became final, and because he provided no reason for his failure to file his petition before September 11, 2003, his petition is barred, and must be denied.

ORDER

For the foregoing reasons, the § 2255 Petition is DENIED.

DATED this 31st day of July, 2008.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge